

Rep. Colón

Janssen, Andy

From: Michael End [MEnd@ehclaw.com]
Sent: Monday, April 19, 2010 10:33 PM
To: Rep.Colon
Subject: 2009 Assembly Bill 938

Pedro,

I have again looked at Assembly Bill 938. The bill is absolutely required to achieve the goals that Wisconsin laws were written to achieve regarding Wis. Stat. §628.46. The case I mentioned tonight took place two years ago in Ozaukee County. It was not a case involving sec. 628.46, but the principle regarding Assembly Bill 938 was the same. A bifurcated trial was ordered. The case involved a medical malpractice claim against a doctor and a hospital. The claim against the hospital was a credentialing claim, namely, the hospital was negligent for allowing the surgeon to perform the type of surgery he negligently performed in our case. The trial court erroneously ordered that the discovery of the credentialing claim had to wait until after the trial of the malpractice case, so that a second jury would then have to decide the credentialing case long after the trial of the malpractice case. Talk about inefficiency in the legal system! The second issue in cases involving sec. 628.46 is usually an easy issue to determine. Discovery is usually much less than in the case in chief. The efficient way to try such a case is to allow the same jury to determine both issues, rather than have a new jury at a later date have to become acclimated to the facts of the case, learn the facts of the subordinate issue, and then decide the case, presumably months or years after resolution of the primary cause of action. Assembly Bill 938 would prevent such an illogical course from taking place.

The case of mine was Berman v. Gennarelli.

I will be in the office tomorrow. Call me if you would like to discuss this.

Mike End

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4/20/2010

PROPOSED AMENDMENT TO W.S.A. 628.46

WEST'S WISCONSIN STATUTES ANNOTATED
INSURANCE (CH. 600 TO 655)
CHAPTER 628. INSURANCE MARKETING
SUBCHAPTER III. MARKETING PRACTICES

Current through 2009 Act 27, Acts 29 through 41, and Acts 43 through 49, published 10/20/2009

628.46. Timely payment of claims

(1) Unless otherwise provided by law, an insurer shall promptly pay every insurance claim. A claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after written notice is furnished to the insurer. Any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any claim is overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the U.S. mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of 12% per year.

**** The Circuit Court Judge is authorized to decide the applicability of interest following a decision on the case on the merits.**

(2) Notwithstanding sub. (1), the payment of a claim shall not be overdue until 30 days after the insurer receives the proof of loss required under the policy or equivalent evidence of such loss. The payment of a claim shall not be overdue during any period in which the insurer is unable to pay such claim because there is no recipient who is legally able to give a valid release for such payment, or in which the insurer is unable to determine who is entitled to receive such payment, if the insurer has promptly notified the claimant of such inability and has offered in good faith to promptly pay said claim upon determination of who is entitled to receive such payment.

(2m)(a) Notwithstanding subs. (1) and (2) and except as provided in par. (b), a claim for payment for chiropractic services is overdue if not paid within 30 days after the insurer receives clinical documentation from the chiropractor that the services were provided unless, within those 30 days, the insurer provides to the insured and to the chiropractor the written statement under > s. 632.875(2).

(b) Paragraph (a) does not apply to any of the following:

1. Worker's compensation insurance.

2. Any line of property and casualty insurance except disability insurance. In this subdivision, "disability insurance" does not include uninsured motorist coverage, underinsured motorist coverage, or medical payment coverage.

(3) This section applies only to the classes of claims enumerated in > s. 646.31(2).

<<For credits, see Historical Note field.>>

> <General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

Source:

L.1975, c. 39, § 708, eff. July 31, 1975.

> Wis.Stats. § 631.02.

L.1975, c. 375, § 43, eff. June 22, 1976.

L.1979, c. 109, § 16, eff. Feb. 16, 1980.

L.1979, c. 110, § 60(2), eff. March 1, 1980.

> St.1979, § 636.10.

L.1981, c. 38, § 24, eff. Nov. 1, 1981.

2001 Act 16, § 3755g, eff. Sept. 1, 2001.

2001 Act 65, §§ 19, 20, eff. April 24, 2002.

2001 Act 65 renumbered and amended subsec. (2m) as (2m)(a) and created subsec. (b).

2001 Act 16 amended subsec. (2m).

2001 Act 16, § 9327(1c) provides:

"Claim for chiropractic services. If a policy, plan, or contract contains provisions that are inconsistent with the treatment of sections 628.46(2m) and 632.875(2)(intro.) of the statutes, the treatment of sections 628.46(2m) and 632.875(2)(intro.) of the statutes first applies to that policy, plan, or contract on the day on which the policy, plan, or contract is terminated or renewed, whichever occurs first."

REFERENCES

ADMINISTRATIVE CODE REFERENCES